

holding, servicing or liquidating such loans.

[48 FR 30947, July 6, 1983, as amended at 54 FR 12874, Mar. 29, 1989]

#### §§ 1980.2—1980.5 [Reserved]

#### § 1980.6 Definitions and abbreviations.

(a) *General definitions.* The following general definitions are applicable to the terms used in this part. Additional definitions may be found in the subparts relating to the particular type of loan involved.

*Assignment Guarantee Agreement (Form FmHA or its successor agency under Public Law 103-354 449-36).* The signed agreement among FmHA or its successor agency under Public Law 103-354, the lender, and the holder, setting forth the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

*Conditional Commitment (Farmer Programs) (Form FmHA or its successor agency under Public Law 103-354 1980-15).* FmHA or its successor agency under Public Law 103-354's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Conditional Commitment (Farmer Programs)."

*Conditional Commitment for Guarantee (Form FmHA or its successor agency under Public Law 103-354 449-14).* FmHA or its successor agency under Public Law 103-354's advice to the lender that the material it has submitted is approved subject to the conditions and requirements set forth in "Conditional Commitment for Guarantee."

*Conditional Commitment for Contract of Guarantee (Line of Credit) (Form FmHA or its successor agency under Public Law 103-354 1980-15).* FmHA or its successor agency under Public Law 103-354's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Conditional Commitment for Contract of Guarantee."

*Contract of Guarantee (Line of Credit) (Form FmHA or its successor agency under Public Law 103-354 1980-27).* The signed commitment issued by FmHA or its successor agency under Public Law 103-354 setting forth (specifically or by

reference) the terms and conditions of the guaranteed line of credit.

*Finance Office.* The office which maintains the FmHA or its successor agency under Public Law 103-354 financial records. It is located at 1520 Market Street St. Louis, Missouri 63103.

*FmHA or its successor agency under Public Law 103-354.* The United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103-354, an agency of the United States Department of Agriculture. References to the National Office, Finance Office, State Office, County Office, State Director, District Director, County Supervisor, or other FmHA or its successor agency under Public Law 103-354 offices or official should be read as prefaced by "FmHA or its successor agency under Public Law 103-354."

*Guaranteed line of credit.* Loan advances made and serviced by a lender subject to a maximum amount agreed to by the lender and FmHA or its successor agency under Public Law 103-354 which is specified in Form FmHA or its successor agency under Public Law 103-354 1980-27, "Contract of Guarantee (Line of Credit)," and for which FmHA or its successor agency under Public Law 103-354 has entered into a Form FmHA or its successor agency under Public Law 103-354 1980-38, "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government."

*Guaranteed loan.* A loan made and serviced by a lender for which FmHA or its successor agency has entered into a Form FmHA 449-35 or Form FmHA 1980-38, "Lender's Agreement," and for which FmHA or its successor agency has issued a Form FmHA 449-34, "Loan Note Guarantee."

*Hazard insurance.* Includes fire, wind-storm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

*Holder.* The person or organization other than the lender who holds all or a part of the guaranteed portion of the loan with no servicing responsibilities.

Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a holder when Form FmHA or its successor agency under Public Law 103–354 449–36, “Assignment Guarantee Agreement,” is used.

**Insured loans.** A loan directly made and serviced by FmHA or its successor agency under Public Law 103–354 as lender with funds from the Rural Development Insurance Fund, Rural Housing Insurance Fund, or Agricultural Credit Insurance Fund.

**Joint financing.** Occurs when two or more lenders (or any combination of such lenders) makes separate loans to supply the funds required by one applicant. For example, such joint financing may consist of FmHA or its successor agency under Public Law 103–354 financial assistance with the Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Small Business Administration (SBA), other Federal and State agencies, and private and quasi-public financial institutions.

**Lender.** The person or organization making and servicing the loan or advancing and servicing the line of credit which is guaranteed under the provisions of the appropriate subpart. The lender is also the party requesting a guarantee.

**Lender's Agreement (Forms FmHA or its successor agency under Public Law 103–354 449–35 or 1980–38).** The signed agreement between FmHA or its successor agency under Public Law 103–354 and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee or Contract of Guarantee is issued. Form FmHA or its successor agency under Public Law 103–354 1980–38 is used for Farmer Programs loans only and will be referred to as “Lender's Agreement” even though its full title is “Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government.”

**Line of credit agreement.** An evidence of debt in those instances in which a lender extends a line of credit to a borrower.

**Loan Note Guarantee (Form FmHA or its successor agency under Public Law 103–354 449–34).** The signed commitment issued by FmHA or its successor agency under Public Law 103–354 setting forth the terms and conditions of the guarantee.

**Market value.** The amount for which property would sell for its highest and best use at voluntary sale.

**NOTE:** An evidence of debt. In those instances where FmHA or its successor agency under Public Law 103–354 makes an insured loan or guarantees a bond issue, “note” shall also be construed to include “Bond” or other evidence of indebtedness where appropriate.

**Principals of borrowers.** Includes owners, officers, directors, entities and others directly involved in the operation and management of a business.

**Transfer and assumption.** The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding. In relation to transfer and assumption cases, where appropriate, “liquidation” and “loan” shall be construed to mean “transfer and assumption,” “promissory note” shall be construed to mean “assumption agreement,” and “borrower” shall be construed to mean “assuming party” or “transferee.”

(b) **Abbreviations.** The following abbreviations are applicable:

**ASCS—** Agricultural Stabilization and Conservation Service.

**CLP—** Certified Lender Program.

**CP—** Community Programs.

**EDA—** Economic Development Administration.

**EM—** Emergency Loans.

**EPA—** Environmental Protection Agency.

**EIS—** Environmental Impact Statement.

**FO—** Farm Ownership.

**FmHA or its successor agency under Public Law 103–354—** Farmers Home Administration or its successor agency under Public Law 103–354.

**FDAA—** Federal Disaster Assistance Administration.

*FIA*— Federal Insurance Administration.

*FMI*— Forms Manual Insert.

*OGC*— Office of the General Counsel.

*OL*— Operating loans.

*OL-Y*— Operating Loans-Youth.

*RL*— Recreation loans.

*SBA*— Small Business Administration.

*SBIC*— Small Business Investment Company.

*SW*— Soil and Water.

*USDA*— United States Department of Agriculture.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39883, Sept. 30, 1985; 51 FR 6707, Feb. 25, 1986; 54 FR 4, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42481, 42482, Oct. 17, 1989; 55 FR 11134, Mar. 27, 1990; 55 FR 19245, May 9, 1990; 58 FR 34306, June 24, 1993; 58 FR 48291, Sept. 15, 1993; 61 FR 67632, 67633, Dec. 23, 1996]

#### §§ 1980.7—1980.10 [Reserved]

#### § 1980.11 Full faith and credit.

The Loan Note Guarantee and Contract of Guarantee constitute obligations supported by the full faith and credit of the United States and are incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. Generally, any Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void. In the case of Farm Credit Programs loans, however, a Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement attached to a note that provides for the capitalization of interest is not void. The guarantee and right to require purchase will be directly enforceable by holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender. The Loan Note Guarantee or Contract of Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the

lender to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Form FmHA 1980-15 (available in any Agency office). Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or the Agency has requested the holder to surrender the evidence of debt for repurchase.

[60 FR 53255, Oct. 13, 1995]

#### § 1980.12 [Reserved]

#### § 1980.13 Eligible lenders.

(a) *Local lenders.* Local lenders may participate by using the various sources of capital and segments of the money market to meet the necessary financing requirement for guaranteed loan programs. Except in paragraphs (a)(1) and (2) this section, the Agency or its successor agency under Public Law 103-354 will require that a local lender be involved for each project. A local lender is a lender in or near a community where the project is or will be located who routinely provides loan services to such community. Although the project may involve other lenders, investors, or packagers, the local lender will be the lead lender and the lender for purposes of these regulations responsible for servicing and liquidation (if necessary) of the loan. The lender may use agents, correspondents, branches, financial experts, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. The Agency or its successor agency under Public Law 103-354